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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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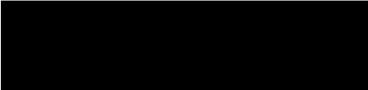
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and Immigration
Services

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DATE: **MAY 02 2012** Office: TEXAS SERVICE CENTER



IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel asserts that the petitioner meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3) and that he submitted comparable evidence of his extraordinary ability pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). For the reasons discussed below, the AAO will uphold the director's decision.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

II. ANALYSIS

A. Evidentiary Criteria

This petition, filed on October 18, 2010, seeks to classify the petitioner as an alien with extraordinary ability as a medical doctor specializing in nephrology and kidney transplantation. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).²

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted a photograph of his trophy and award certificate (2003) from the “5th Youth Festival of Kharazmi” (emphasis added) indicating that he received [REDACTED] of medical sciences group” (emphasis added) for his medical doctor thesis entitled “The Study of Serum Lipid Profile in Renal Transplanted Patients & its Effects on Transplanted Kidney.”³ The petitioner also submitted an October 2, 2010 letter from [REDACTED]

University of Medical Sciences, stating:

I had the opportunity to supervise [the petitioner’s] work from a very early stage of his career In fact, in 2001 I supervised [the petitioner’s] Medical Doctor Thesis The thesis, titled “A Study of Serum Lipid Profiles in Renal Transplanted Patients and its Relationship to the Function of Transplanted Kidney,” was a study over a two year period and involved ninety-three (93) renal transplant patients.

In response to the director’s request for evidence (RFE), the petitioner submitted information about the “Khwarizmi International Award” and the “Kharazmi Youth Festival.” The majority of the submitted documents pertain to the “Khwarizmi International Award” which the petitioner did not receive. Instead, the petitioner received a “3rd Prize” at the “5th Youth Festival of Kharazmi.” The petitioner’s documentation included information from *Wikipedia*, an online encyclopedia, stating:

The Khwarizmi International Award is given annually by the Iranian Research Organization for Science and Technology (IROST) to individuals who have made outstanding achievements in research, innovation and invention, in fields related to science and technology.

* * *

² On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

³ The record reflects that the petitioner earned his Doctor of Medicine (M.D.) degree from Shiraz University School of Medicine in 2001.

In 1987, the leading Iranian Research Organization for Science and Technology (IROST), affiliated to the ministry of Science, Research and Technology of Iran, decided to institute an award which acknowledges the Iranian outstanding achievements in the field of Science and Technology.

IROST proposed the creation of the Khwarizmi Award in memory of [REDACTED] the great Iranian Mathematician and Astronomer (770-840 C.E).

However the first session which was held in 1987, was only for Iranian nationals, but from the fifth session it became an international award.

* * *

The Khwarizmi Youth Award is a national version of Khwarizmi International Award which only Iranians who are less than 30 years old can participate. This award has started since 1999.

With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.⁴ See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Accordingly, the AAO will not assign weight to information for which *Wikipedia* is the source. The petitioner also submitted a document in Farsi entitled “Kharazmi Youth Festival,” but the English language translation of the document was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. *Id.* The petitioner’s response also included examples of two researchers who received Kharazmi Youth Festival “First” Prizes as young scientists and two established scientists who received “First” Place Khwarizmi International Awards, but no examples of Kharazmi Youth Festival “Third” Prize recipients.

⁴ Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . ***Wikipedia cannot guarantee the validity of the information found here.*** The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on April 12, 2012, copy incorporated into the record of proceeding.

The petitioner also submitted letters from [REDACTED], both producers for the Islamic Republic of Iran Broadcasting (IRIB) Agency, stating that they interviewed the petitioner for IRIB television programs in 2003 and 2006. Their letters, however, do not specifically discuss the petitioner's receipt of a "Third" Prize. Further, the petitioner failed to submit certified English language translations of the IRIB television interviews as required by the regulation at 8 C.F.R. § 103.2(b)(3). [REDACTED] claims that the petitioner's prize "is the most prestigious medical prize in Iran given by the President" and "the most prestigious award a scientist can earn in Iran." The AAO notes, however, that the petitioner's third prize was not given by the President of Iran. Further, the information submitted by the petitioner about the more exclusive Khwarizmi International Award contradicts [REDACTED] assertions that the Kharazmi Youth Festival Prize "is the most prestigious medical prize in Iran given by the President" and "the most prestigious award a scientist can earn in Iran." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The preceding documentation is not sufficient to demonstrate that the petitioner's "3rd Prize" at the "5th Youth Festival of Kharazmi" is a nationally recognized prize for excellence in the petitioner's field of endeavor. The AAO notes that participation in the Kharazmi Youth Festival is limited to individuals age thirty and younger. Thus, experienced professionals in the field who have long since completed their medical training are excluded from consideration. Further, the petitioner did not submit evidence of the national or international *recognition* of his third prize at the Kharazmi Youth Festival. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's award be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, there is no documentary evidence demonstrating that the petitioner's third prize is recognized beyond the context of the festival where it was presented and therefore commensurate with a nationally or internationally recognized prize or award for excellence in the field.

The petitioner submitted evidence of his receipt of awards from Shiraz University of Medical Sciences including "best and distinguished thesis of School of Medicine" (2001), "Distinguished Researcher Award" (2001), "Excellent Rank in the field of student research," "Excellent Article Award" at "the First International Congress of the Students of Medical Sciences" (2001), a Certificate for obtaining "3rd Rank in the research plan for evaluating the clinical competency of medical interns related to the common clinical diseases" (2001), and various "Token of Appreciation" certificates. The preceding student awards reflect institutional recognition by the

petitioner's alma mater rather than nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted a certificate from the British Transplantation Society (BTS) certifying that he and four others presented an abstract in the "Best Abstracts" session of the Renal Association BTS Annual Conference in 2009. There is no documentary evidence showing that the honor was recognized beyond the context of the conference where it was presented. In response to the director's RFE, the petitioner submitted general information about the BTS and its "online abstract submission system," but he failed to submit evidence showing that the preceding certificate from the BTS constitutes a nationally or internationally recognized prize or award for excellence in the field.

The petitioner submitted a certificate from the Head of the Department of Health and Social Affairs of Yerevan City Hall, Armenia stating he received an award for presenting his paper at the "2nd Young Medics International Conference" (YMIC) in 2003. The petitioner also submitted an e-mail from the Organizing Committee of the YMIC stating that he received a \$400 travel grant to attend the 2003 YMIC. The petitioner's initial evidence also included an August 15, 2007 letter informing him of receipt of a \$400 travel grant to attend the 4th YMIC in 2007. In response to the director's RFE, the petitioner submitted a welcome message providing general information about the 5th YMIC, but there is no supporting documentary evidence showing that the petitioner's certificate from Yerevan City Hall and his YMIC travel grants equate to nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted an October 22, 2008 letter informing him that he received a St. John Ambulance Air Wing Traveling Fellowship in Transplantation. The letter states: "The Awards Committee of the St. John Ambulance Air Wing Traveling Fellowship congratulate you on your planned project and have agreed to support your application for funds to help you advance your work in the field of organ transplantation." In response to the director's RFE, the petitioner submitted information about the St. John Ambulance Air Wing Traveling Fellowship posted on the BTS website stating:

Description: Travelling Fellowships will usually be awarded annually. The purpose of the awards is to enable the recipient to visit other transplant centres in the United Kingdom or abroad to widen their knowledge and experience. A report for publication, and possibly presentation for St John Ambulance, will be expected within six weeks of the visit.

Type: Travel Awards.

* * *

Restrictions: Applications are invited from workers in all aspects of transplantation. These may include basic scientists, surgeons, physicians, nurses and others whose work benefits transplant patients.

The petitioner also submitted a St. John Ambulance National Headquarters Media Release seeking "worthy applicants" for the travel award. According to the information submitted by the petitioner, the traveling fellowship was designed to help him advance his work in the field of organ transplantation and to widen his "knowledge and experience," and not to honor or recognize his past "excellence in the field in the field of endeavor." There is no documentary evidence showing that petitioner's travelling fellowship is a nationally or internationally recognized prize or award for excellence in the field.

The petitioner submitted a trophy and certificate indicating that he was "the youngest delegate" who attended the 7th Congress of the Asian Society of Transplantation (CAST) in March 2002. The petitioner also submitted a "Certificate of Attendance" certifying that he was "the youngest presenter" who participated in the 8th CAST in September 2003. There is no evidence showing that the preceding trophy and attendance certificates equate to a nationally or internationally recognized prizes or awards for excellence in the field, rather than simply acknowledgments of the petitioner's participation in the two conferences as the youngest presenter. The petitioner's evidence also included a September 8, 2003 letter stating that he was "one of the successful recipients of the Transplantation Society Travel Scholarships" in the amount of \$1000 to attend the 8th CAST. The petitioner also submitted a September 2003 certificate stating that he was "the youngest recipient of the Transplantation Society Travel Scholarship" awarded at the 8th CAST. The petitioner also submitted a December 2005 letter and certificate reflecting that he received a "Young Investigator Award" for his paper submitted for presentation at the 9th CAST in 2005. In addition, the petitioner submitted a certificate stating that he received a "Young Investigator Award" and travel subsidy for his abstract submitted for presentation at the 10th Congress of the Middle East Society for Organ Transplantation (MESOT) in 2006. The AAO notes that competition for the preceding travel scholarships and "Young" Investigator Awards was limited to "young" physicians and researchers in the early stages of their career. Experienced professionals in the field generally do not seek such awards and travel subsidies. There is no supporting documentary evidence showing that any of the preceding awards are nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

In light of the above, the petitioner has not established that he meets this regulatory criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence of his membership in the BTS and information from the society's website stating:

You can apply to become a BTS member on-line following the link below. The application is in two parts. You first apply for a BTS web account. This provides you with a pending membership account that prompts you to complete a member profile. You will require a valid email address to be able to do this. You will receive an email confirming your pending membership account. You can sign in immediately and have access to your account and non-member events and the second stage of the on-line application process.

The second application stage requires you to complete an on-line membership application accessed from within your account. You will be able to save your application and return to it before you submit it to the BTS Executive for approval. Once approval has been granted you will be required to make your subscription payment to complete the application process. You be [sic] required to provide two sponsors from two current Society Members and their valid email addresses. If this presents a difficulty you should discuss your application with the General Secretary.

The preceding instructions for becoming a member of the BTS do not indicate that the society requires "outstanding achievements" of its members as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii). There is no evidence showing that the BTS requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field.

The petitioner submitted evidence of his membership in the Royal College of Surgeons of England (RCSE). In response to the director's RFE, the petitioner submitted "The Membership Examination of the Surgical Royal Colleges of Great Britain 2008/9 Annual Report" stating:

The Membership Examination of the Surgical Royal Colleges of Great Britain (MRCS) is designed for *candidates in the generality part of their specialty training*. It is a crucial milestone which must be achieved *if trainees are to progress to specialty surgical training* as defined by the nine surgical Specialty Advisory Committees (SACs). The purpose of the MRCS is *to determine that trainees have acquired the knowledge, skills and attributes required for the completion of core training in surgery and, for trainees following the Intercollegiate Surgical Curriculum Programme, to determine their ability to progress to higher specialist training in surgery*.

* * *

The MRCS examination has two parts: Part A (written paper) and Part B Objective Structured Clinical Examination (OSCE).

[Emphasis added.]

Counsel's letter responding to the director's RFE summarizes information posted on the RCSE's website at www.rcseng.ac.uk. According to the RCSE's website, to be eligible to obtain the Diploma of Member, all candidates must:

- 1.1 hold a primary medical qualification that is acceptable to the United Kingdom General Medical Council for Full or Limited Registration or to the Medical Council in Ireland for Full or Temporary Registration; overseas candidates must hold a primary medical qualification acceptable to the Councils of the four Colleges;
- 1.2 have passed Parts 1, 2 and 3 of the MRCS examination; and
- 1.3 have applied for Membership and been approved by the relevant College Council. Details of the procedure for election to Membership may be obtained from individual Colleges.

See http://www.rcseng.ac.uk/exams/docs/mrcs/intercollegiate_regulations_june06.pdf, accessed on April 13, 2012, copy incorporated into the record of proceedings.

The information in the 2008/9 Annual Report indicates that membership in the RCSE is a necessary advancement requirement "if trainees are to progress to specialty surgical training." Moreover, the AAO is not persuaded that holding a primary medical qualification, passing the required parts of the MRCS examination, and attaining the approval of the relevant College Council are "outstanding achievements." The AAO notes that the legislative history makes clear that Congress intended this classification for those with a "career of acclaimed work" rather than for a physician who simply completes the "generality part" of his "specialty training." See H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

The petitioner submitted evidence of his membership in the European Society for Organ Transplantation (ESOT). In response to the director's RFE, the petitioner submitted information about the ESOT's "Membership Application Procedure" stating:

Membership of ESOT is acquired by following the steps specified below:

1. The first step of the ESOT membership application is filling out the online application form to collect personal data, a photograph, curriculum vitae and member profile based on interests in donation and transplantation.
2. The second step is the approval by so called Support Members. Two members of ESOT have to support your membership. During your online application you will fill out the names of these two ESOT members and they will be automatically asked via e-mail to confirm your professional acquaintance with the field of donation and transplantation.

3. After both support members have approved your membership your application is sent to the ESOT Secretariat and Treasury and payment of your dues will be handled.
4. The ESOT Council will need to list your membership and during the next ESOT Congress, according to the bylaws, the General Assembly will need to confirm your membership status.

The preceding steps for becoming a member of the ESOT do not indicate that the society requires "outstanding achievements" its members as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii). The documentation submitted by the petitioner fails to demonstrate that the ESOT requires outstanding achievements of its members, as judged by recognized national or international experts in his field.

In response to the director's RFE, counsel asserts that the petitioner is a member of the "Iran National Foundation of Elites" (INFE), but the petitioner failed to submit documentary evidence from the foundation indicating that he holds membership in the INFE. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner's response included a document in Farsi entitled "Kharazmi Youth Festival," but the English language translation of the document was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). There is no documentary evidence (such as bylaws or rules of admission) from the INFE demonstrating that it requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field.

In light of the above, the petitioner has not established that he meets this regulatory criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.⁵

⁵ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

As previously discussed, the petitioner submitted letters from [REDACTED] both producers for IRIB Agency, stating that they interviewed the petitioner for television programs in 2003 and 2006. The petitioner, however, failed to submit video footage of him being interviewed for the 2003 IRIB television program. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, there is no documentary evidence indicating the specific viewership for the particular IRIB television programs in which the petitioner appeared. The petitioner also submitted an English language translation of a December 24, 2003 letter from [REDACTED] Dentistry and Pharmacy, Shiraz University, requesting the attendance of the petitioner and five other students for a media interview on December 27, 2003. The English language translation of [REDACTED] letter does not specifically identify the media outlet conducting the interview and [REDACTED] original letter in Farsi was not submitted. Moreover, the petitioner failed to submit English language translations of the petitioner's two IRIB television interviews as required by the regulations at 8 C.F.R. §§ 103.2(b)(3) and 204.5(h)(3)(iii). Finally, the plain language of this regulatory criterion requires "*published* material about the alien" (emphasis added) including "the title, date and author of the material." A television interview featuring the petitioner does not meet these requirements.

In response to the director's RFE, counsel asserts that the journal articles and conference presentations authored by the petitioner meet this regulatory criterion. The plain language of this regulatory criterion, however, requires published material "about the alien" rather than material authored by him about his own research. The regulations contain a separate category of evidence regarding the petitioner's authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). The plain language of regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien" relating to his work rather than simply about the petitioner's work. *Compare* 8 C.F.R. § 204.5(i)(3)(i)(C) relating to outstanding researchers or professors pursuant to section 203(b)(1)(B) of the Act. *See also, e.g., Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1,*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). It cannot be credibly asserted that the submitted journal articles and conference papers authored by the petitioner are "about the alien."

The petitioner's response to the director's RFE included citation data from GoogleScholar.com and ResearcherID.com showing the number of cites to each of the petitioner's journal articles. For instance, according to the submitted citation data, the petitioner's most frequently cited article entitled "Hematopoietic stem cell transplantation for beta-thalassemia major: Experience in South of Iran" had nine citations. The petitioner, however, did not submit copies of the citing articles demonstrating that they were about the petitioner. Regardless, articles which cite to the petitioner's work are primarily about the authors' own work, and are not about the petitioner or even his work. As previously discussed, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien." With regard to this regulatory criterion, a footnoted reference to the alien's work without evaluation is of minimal probative value. There is no evidence indicating that the citing articles discuss the merits of the petitioner's work, his standing in the field, any significant impact that his work has had on the field, or any other

information so as to be considered published material about the petitioner as required by this regulatory criterion. Moreover, the AAO notes that the articles citing to the petitioner's work likely referenced numerous other authors. The articles citing to the petitioner's work are more relevant to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v) and will be fully addressed there.

In light of the above, the petitioner has not established that he meets the plain language requirements of this regulatory criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petition submitted documentation demonstrating that he meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Accordingly, the AAO affirms the director's finding that the petitioner meets this regulatory criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

In the director's decision, he determined that the petitioner failed to establish eligibility for this regulatory criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance* in the field." [Emphasis added.] Here, the evidence must be reviewed to see whether it rises to the level of original scientific or scholarly-related contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The petitioner submitted seven letters of support discussing his work.

[REDACTED] at the University College London and Consultant Surgical Oncologist at Royal Free Hospital, London, states:

I have known [the petitioner] since March 2004, when he joined our team at the University College London Hospitals. From March 2004 to August 2004, [the petitioner] was working with me within the Department of Surgery, and after that time, I continued to be his mentor and personally able to witness his progress.

* * *

In 2009, [the petitioner] and I co-authored an important paper, published last year in the *British Medical Journal*

* * *

We found that women who undergo the breast reduction surgeries will generally have a low risk of accidentally being found to have breast cancer. In this paper for the First time in medical literature we debated whether routine histological examination of tissue specimens after breast reduction surgeries is necessary. We challenged the current practice that young women throughout the world are effectively undergoing a “screening” procedure after cosmetic breast reduction surgeries without appropriate informed consent procedure and recommended a guideline for better practice.

By the end of 2010, [the petitioner] will have more than twenty-five (25) published articles and seventeen (17) abstracts in internationally known scientific journals. He has co-authored two booklets and has presented his research works in more than 30 national and international scientific meetings.

There is no documentary evidence showing that the petitioner’s article in *British Medical Journal* is frequently cited or that his findings are otherwise majorly significant to his field. With regard to [redacted] and the other references’ comments regarding petitioner’s published and presented work, the regulations contain a separate criterion regarding the authorship of scholarly articles. 8 C.F.R. § 204.5(h)(3)(vi). The AAO will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. Publications and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of “major significance.” *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff’d in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reaffirmed its holding that the AAO did not abuse its discretion in finding that the alien had not demonstrated contributions of major significance. 596 F.3d at 1122. Thus, there is no presumption that every published article or conference presentation is a contribution of major significance; rather, the petitioner must document the actual impact of his article or presentation.

In response to the director’s RFE, the petitioner submitted documentary evidence showing that his work has been cited to by others in the field. The number of independent citations per article, however, is minimal. For instance, the petitioner submitted citation data from GoogleScholar.com and ResearcherID.com reflecting that none of his articles have been cited to more than nine times. Moreover, according to the submitted citation data, the number of “Times Cited” for many of the articles authored by the petitioner was zero. The petitioner has not established that the number of independent cites to his body of published and presented work is indicative of original contributions of “major significance” in the field.

[redacted] further states:

[The petitioner's] research and work has been original contributions to the general surgery and transplant surgery specialized fields. I would like to highlight one of his research works from the Royal Marsden Hospital, London, which I have closely followed and greatly admire, in the field of cancer research. His research work titled: "Testing the Feasibility of Intra-Operative Sentinel Lymph Node Touch Imprint Cytology." He presented the result of this study at the Association of Breast Surgery and British Association of Surgical Oncologists Joint Annual Scientific Conference, November 26-27, 2007 which was held in the Royal College of Surgeons of England, London, United Kingdom.

comments that he greatly admires the petitioner's work, but does not provide specific examples of how the petitioner's work has substantially impacted treatment methods in the medical field, influenced the work of other researchers in the field, or otherwise equates to original contributions of "major significance" in the field. According to the citation data submitted by the petitioner from GoogleScholar.com and ResearcherID.com, the number of "Times Cited" for "Testing the Feasibility of Intra-Operative Sentinel Lymph Node Touch Imprint Cytology" was zero.

Transplantation, St. Louis University School of Medicine, states:

In a previous study, [the petitioner] and his colleague found that in the United Kingdom, there is a lack of consensus amongst kidney specialists on how to manage the discovery of misattributed paternity. Misattributed paternity refers to when patients who believe they are father and child, are in fact not genetically related. In the process of preparing for living donor kidney transplantation, a genetic test can reveal such a situation. This creates several ethical questions that the doctor must face in relation to whether or not this discovery should be shared with the patient or the family. The paper concludes that one way to manage this dilemma is for only necessary testing to be ordered and to discuss the possibility of misattributed paternity prior to testing and establish whether or not the patient wants to know the result.

[The petitioner's] abstract was recently published in the *American Journal Transplantation* after his colleague presented it at the "American Transplant Congress" in 2010.

There is no citation evidence for the preceding abstract in *American Journal of Transplantation* demonstrating that the petitioner's findings were majorly significant to his field. Moreover, does not provide specific examples of how the results from the petitioner's misattributed paternity study are being widely applied by others in the field or that they otherwise equate to original contributions of "major significance" in the field.

continues:

In the next few months, [the petitioner] and I intend to implement this study inside the United States and to find out if there is consensus amongst U.S. kidney specialists (nephrologists) and transplant surgeons for dealing with this ethical dilemma. The results of this study will be important for the development of U.S. national guidelines which address the issue.

* * *

I would like to highlight [the petitioner's] work, which I have closely followed and greatly admire, in the following two studies:

[redacted] [the petitioner], et al: The impact of donor myelofibrosis on outcome of renal transplantation. *Saudi Journal of Kidney Diseases and Transplantation*. (Accepted for publication, 2010)

In this article which will be published in the next few months, [the petitioner] and his colleagues have suggested that kidneys from donors with myelofibrosis disease, a disorder of the bone marrow, may have significant vascular and parenchymal disease. This may compromise the ability of that kidney to work adequately in the recipient body.

In the preceding paragraphs, [redacted] discusses his intention to collaborate with the petitioner in the future and an article by the petitioner that was "accepted for publication" in *Saudi Journal of Kidney Diseases and Transplantation* in 2010. [redacted]'s expectations regarding his future collaboration with the petitioner and a research study by the petitioner published after October 18, 2010 do not constitute evidence that the petitioner's work was already influential as of that date. The petitioner must demonstrate his eligibility as of the filing date. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Consistent with these decisions, a petitioner cannot secure a priority date in the hope that his as of yet unpublished research will subsequently prove influential. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008). Accordingly, research results that were not published as of the date of filing and, thus, had not been disseminated in the field as of that date, cannot establish eligibility as of the date of filing. To hold otherwise would have the untenable result of an alien securing a priority date based on the speculation that his work might prove influential while the petition is pending.

[redacted] further states:

[redacted] [the petitioner], et al: Impact of oral zinc therapy on the level of sex hormones in male patients on hemodialysis. *Ren Fail.* 32(4):417-9, 2010.

In this article, [the petitioner] and his colleagues have suggested that zinc supplementation may increase the serum levels of sex hormones in the hemodialysis patients which may improve some aspects of their sexual function. Considering the fact that sexual dysfunction is a common problem in hemodialysis patients, this can be quite helpful and important point when treating such patients.

does not provide specific examples of how the above findings have impacted the field at large. The citation evidence submitted by the petitioner from GoogleScholar.com and ResearcherID.com indicates that "Impact of oral zinc therapy on the level of sex hormones in male patients on hemodialysis" was cited to zero times. There is no documentary evidence showing that the petitioner's article is frequently cited by independent researchers or otherwise constitutes an original contribution of major significance in the field.

University of Tennessee Health Science Center, states: "I have known [the petitioner] since 1997 when we met at Shiraz University of Medical Science, our medical school in Iran. I was his professor for the last two years of his medical education between 1997 and 1999." discusses an article by the petitioner and his coauthors entitled "Risk Factors and Incidence of Cancer in Kidney-Pancreas and Kidney Transplant Recipients Reported by UNOS [United Network Organ Sharing] between 1988 and 2006" stating:

In this study, [the petitioner] and his colleagues compared the risk factors and incidence of cancers in patients with kidney-pancreas and kidney transplantation. They carefully reviewed data covering the period from 1988-2006 from the United Network Organ Sharing (UNOS), the largest data set presently available and the only Organ Procurement and Transplantation Network (OPTN) in the United States.

The data spanned eighteen years and covered 248,297 patients (14,152 patients with kidney-pancreas transplantation plus 234,145 patients with kidney transplantation). [The petitioner] and his colleagues are responsible for this study, the largest study to date on the risk factors of cancer and kidney disease, extraordinary work in a very important field.

According to the citation data submitted by the petitioner from GoogleScholar.com and ResearcherID.com, the preceding article was cited to zero times. does not provide specific examples how the results from the petitioner's study are being applied by others in the field or how they otherwise equate to original contributions of "major significance" in the field.

states: "I have known [the petitioner] professionally since February 2008. He worked as a Transplant Surgery Specialty Registrar between February 2008 and January 2009 in our transplant unit at St. Georges Hospital, London." lists six published articles and eight conference presentations he coauthored with the petitioner. Dr. Fronck further states:

I would like to . . . mention the following key work, which I greatly admire.

[The petitioner], [REDACTED]
Secondary to Oxalosis in a Recipient of a Simultaneous Kidney-Pancreas
Transplant: Was Mycophenolate the Cause? *Nephrology Dialysis
Transplantation*, 23(7):2409, 2008.

* * *

In this paper, [the petitioner] and his colleagues from Oxford Transplant Center reported for the first time that Mycophenolate Mofetil (MMF), one of the most commonly used medications used worldwide for immunosuppression in transplant patients, can rarely cause secondary hyperoxaluria (increase in the oxalate excretion by the kidney) and acute renal failure (kidney failure) in the kidney or kidney-pancreas transplant patients. Bearing in mind the usual irreversibility of oxalate nephropathy (renal failure secondary to high oxalate levels) and its acute onset, early recognition of such an adverse effect is essential to prevent its progression.

The citation evidence submitted by the petitioner from GoogleScholar.com indicates that “Acute Renal Failure Secondary to Oxalosis in a Recipient of a Simultaneous Kidney-Pancreas Transplant: Was Mycophenolate the Cause?” was cited to only once. The petitioner has not established that this minimal level of citation is indicative of an original contribution of major significance in the field.

[REDACTED] continues:

In 2007, [the petitioner] prepared a research project proposal titled; “The Study of Thrombo-Elastogram (TEG) Profiles including Platelet Function in Diabetic/Non-Diabetic Kidney Transplant and Simultaneous Pancreas and Kidney Transplant (SPKT) Patients Comparing to Non-Transplant Patients and its Impact on the Outcome of Transplanted Organ.”

* * *

[The petitioner] proposed that by studying the TEG profiles and the platelet function in the SPKT and kidney transplant patients using the new TEG technologies and comparing that with the non-transplant surgical/medical patients we cannot only improve our knowledge on the pathophysiology of haemostasis problems in the transplant setting but also we can improve our current anticoagulation protocols towards individualization of the anticoagulation in different patients based on their TEG tracings.

[REDACTED] comments on the petitioner’s research projects, but [REDACTED] does not provide specific examples of how the petitioner’s work has substantially impacted treatment methods in the medical

field, influenced the work of others in the field, or otherwise constitutes original contributions of major significance in the field.

[REDACTED], Shiraz University of Medical Sciences, states:

I have known [the petitioner] since 1997 when he enrolled in my course of "Hematology Diseases" during the fourth year of his medical school period.

* * *

While I have followed [the petitioner's] professional success closely over the years, I would like to start by commenting on a paper that we coauthored in 2003. Our paper has been cited by at least nine (9) other scientific papers to date, the complete citation is: [REDACTED] and [the petitioner]. Hematopoietic Stem Cell Transplantation for Beta-Thalassemia Major: Experience in South of Iran. *Transplant Proc.* 36:2509-10, 2004.

This paper was the outcome of a ten year follow up on the patients from Hematology Research Center, Shiraz University of Medical Sciences, Shiraz, Iran. This was the first scientific report from Southern Iran on the experience of using bone marrow transplantation for treating the beta-thalassemia major patients.

The petitioner has not established that modest number of cites to the petitioner's article entitled "Hematopoietic Stem Cell Transplantation for Beta-Thalassemia Major: Experience in South of Iran" is indicative of an original contribution of major significance in the field. The petitioner's field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of "major significance" in the field. To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work.

[REDACTED] states:

The thesis, titled "A Study of Serum Lipid Profiles in Renal Transplanted Patients and its Relationship to the Function of Transplanted Kidney," was a study over a two year period and involved ninety-three (93) renal transplant patients.

[The petitioner] conducted the study based on personal review of study patients and data collected by other doctors in the clinic. [The petitioner] published the results in indexed or internationally recognized medical journals. This research and thesis found that the lipid profiles or cholesterol, HDL and LDL levels were increasing following the transplant of the kidney. The study found that if doctors controlled the blood pressure and

lipid profiles via diet or cholesterol and blood pressure lowering medications, then the transplant long term outcome would be more successful. This research work was later published in *Transplantation Proceedings Journal*

While the petitioner's doctoral thesis is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any doctoral thesis or postdoctoral research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every physician who performs original research that adds to the general pool of knowledge has inherently made a contribution of "major significance" to the field as a whole. There is no documentary evidence showing that the petitioner's findings have been widely implemented by other physicians in the field or that his work otherwise equates to original contributions of major significance in the field.

continues:

I also served as [the petitioner's] advisor while he wrote the thirty (30) page booklet titled; "Introduction to Kidney Transplantation for Renal Transplant Patients," published by Nemazee Hospital Organ Transplantation Unit, Shiraz University of Medical Sciences, Iran in October 2000. This booklet is written in the Farsi language of Iran, instructing renal transplant patients regarding transplant procedure, what to expect, what happens when, and how long the recovery is expected to take. The booklet also covered hospital regulations regarding hygiene pre and post transplant, medication options, the benefits and risks, pregnancy and transplantation, the importance of diet, exercise and the risks associated with smoking.

indicates that the petitioner wrote an instructional booklet for transplant patients at Nemazee Hospital, but there is no documentary evidence demonstrating that the petitioner's work was recognized beyond that hospital such that his booklet constitutes an original contribution of major significance in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the contributions be "of major significance in the field" rather than limited to a particular hospital, research institution, or employer.

further states:

[The petitioner], Impact of Atenolol consumption on development of chronic renal allograft dysfunction. *Transplant Proc.* 35:2647-2649, 2003.

This paper is the first in medical literature to discuss the impact of the commonly prescribed blood pressure medication, Atenolol, on kidney transplantation. Other research has shown that while the medication Atenolol decreased blood pressure, it also increases triglyceride (hyperlipidemic effect). [The petitioner's] other research had also shown that controlling both blood pressure and cholesterol is important for successful transplantation. However, for the first time, this paper studied and stated that the effect of lowering the blood pressure via the medication Atenolol is more important that [sic]

the expected increase in triglyceride (hyperlipidemic effect) caused by the medication. In short, prescribing this blood pressure medication to address high blood pressure was good for the “graft,” or the transplanted kidney.

comments on the petitioner’s research findings, but he does not provide specific examples of how the petitioner’s work is being utilized by others in the medical field. The citation evidence submitted by the petitioner from GoogleScholar.com and ResearcherID.com indicates that “Impact of Atenolol consumption on development of chronic renal allograft dysfunction” was cited to only once. The petitioner has not established that this minimal level of citation is indicative of an original contribution of major significance in the field.

University of Medical Sciences, states:

I am especially proud of our cooperation on two papers that we have coauthored in which we hypothesized for the first time in the medical world that adding Pentoxifylline to the kidney perfusion fluid while the kidney is out of the donor’s body and awaiting transplantation into the recipient, helps in preservation of the organ. We also have hypothesized that by prescribing Pentoxifylline to the patients undergoing different contrast radiologic procedures, we might be able to protect their kidney from the damage induced by the contrast. These are only two of the key contributions that [the petitioner] has made to the field.

While discusses his co-authorship of two papers with the petitioner, he fails to provide any specific examples indicating that the petitioner’s research has been actually applied by other physicians in his field, so as to demonstrate that the petitioner’s contributions have been of major significance. further states that the petitioner has “more than twenty-five (25) published articles and seventeen (17) abstracts in top scientific journals,” but there is no evidence indicating that the petitioner’s findings are frequently cited by independent researchers or that they otherwise equate to original contributions of major significance in the field.

The opinions of the petitioner’s references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). Thus, the content of the references’ statements and how they became aware of the petitioner’s reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a physician researcher who has made original contributions of major significance in the field. Without additional, specific evidence showing that the petitioner’s work has been unusually influential, widely

applied throughout his field, or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude he meets this regulatory criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner has documented his authorship of scholarly articles in scientific journals and at international medical conferences and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the AAO affirms the director's finding that the petitioner meets this regulatory criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner submitted documentation showing that he presented his work at various scientific meetings and medical conferences as evidence for this criterion. The petitioner's field, however, is in the sciences rather than the arts. The plain language of this regulatory criterion indicates that it applies to artists. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The petitioner's presentations at international conferences are more relevant to the preceding "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi), a criterion that he has already met. Moreover, it is neither arbitrary, capricious, nor an abuse of discretion to conclude that presentations at scientific conferences do not qualify as display of the petitioner's work at artistic exhibitions or showcases pursuant to 8 C.F.R. § 204.5(h)(3)(vii). *Kazarian*, 596 F. 3d at 1122. Accordingly, the petitioner has not established that he meets the plain language requirements of this regulatory criterion.

B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence.

C. Comparable Evidence Under 8 C.F.R. § 204.5(h)(4)

On appeal, counsel asserts that presentation of the petitioner's work at international conferences in the United States, Asia, Europe, and Australia is comparable evidence of his extraordinary ability pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). The AAO notes that the petitioner's conference presentations were addressed under the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi), a criterion that the petitioner has satisfied. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten categories of evidence "do not readily apply to the beneficiary's occupation." Thus, it is the petitioner's burden to demonstrate why the regulatory criteria at 8 C.F.R. § 204.5(h)(3) are not readily applicable to the alien's occupation and how the evidence submitted is "comparable" to the specific objective evidence required at 8 C.F.R. §§ 204.5(h)(3)(i) – (x). The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified

by the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to satisfy the plain language requirements of at least three categories of evidence at 8 C.F.R. § 204.5(h)(3), the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Regardless, nothing in the record indicates that presentation of one's work is unusual in the medical field or that invitation to present at conferences where the petitioner's work appeared was a privilege extended to only a few top physicians. Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. While presentation of the petitioner's work demonstrates that it was shared with others and may be acknowledged as original work based on its selection for presentation, the AAO is not persuaded that his presentations significantly impacted the field or that his level of recognition extended beyond the engagements in which his work was presented. For instance, there is no evidence showing that any of the petitioner's presentations have been frequently cited by independent researchers in their work or that his presentations have otherwise significantly impacted his field as a whole.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.⁶ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

⁶ The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.